



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. .

MAILED

SEP 28 2010

OFFICE OF PETITIONS

SCHWEGMAN, LUNDBERG & WOESSNER/EBAY
P.O. BOX 2938
MINNEAPOLIS MN 55402

In re Patent No. 7,673,229	:	DECISION ON REQUEST
Pearson et al.	:	FOR
Issue Date: March 2, 2010	:	RECONSIDERATION OF
Application No. 09/589,585	:	PATENT TERM ADJUSTMENT
Filed: June 7, 2000	:	and
Atty Docket No. 2043.025US1	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR POST ISSUE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)", which is being treated as a petition pursuant to 37 C.F.R. § 1.705(d). This petition was filed on May 6, 2010,¹ requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by two thousand, six hundred and seventy-nine (2679) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by two thousand, one hundred and seventy-nine (2179) days is **GRANTED** to the extent indicated herein.

Patentee has indicated that this patent is not subject to a terminal disclaimer.²

This patent issued on March 2, 2010, with a patent term adjustment of 2352 days. It is noted that the Office failed to account for two periods of examination delay pursuant to 37 C.F.R. § 1.704(a)(2): the 54-day period between November 19,

¹ It is noted that this petition contains a certificate of mailing dated May 3, 2010, and that May 2, 2010 fell on a Sunday.

² Petition, page 2.

2004 and January 12, 2005, and the 108-day period between September 25, 2007 and January 11, 2008.

The Office has determined that the patent term adjustment for the above-identified patent is **2179 days**.

The Office agrees with Patentee that the examination delay totals 1002 days, the applicant delay totals 450 days, and the period of overlap totals 333 days.

Patentee has correctly deducted the 333 days of overlap from the 2460-day over three year period to arrive at 2127 days. However, Patentee has failed to deduct the two periods of appellate review that are excluded from the period of B-delay.

A first notice of appeal was filed on March 12, 2007, and a non-final office action was mailed on January 11, 2008. The 306 days of the over three year period consumed by appellate review, beginning on March 12, 2007 and ending on January 11, 2008, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

Similarly, a second notice of appeal was filed on April 3, 2009 and a notice of allowance was mailed on October 13, 2009. The 194 days of the over three year period consumed by appellate review, beginning on April 3, 2009 and ending on October 13, 2009, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

It follows that these two periods of exclusion total 500 (306 + 194) days.

As such, the patent term adjustment is increased by 2179 (1002 days of examination delay plus 1627 "B-delay" (2460 over-three-years minus the aforementioned excluded 500 days minus 333 days of overlap) minus 450 days of applicant delay) days, not 2679 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 C.F.R. § 1.18(e). No additional fees are required.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 C.F.R. § 1.322, the Office will not issue a certificate of correction without first providing assignee or Patentee an opportunity to be heard. Accordingly, Patentee is given **one (1) month or thirty (30) days**, whichever is longer,

from the mail date of this decision to respond. No extensions of time will be granted under 37 C.F.R. § 1.136.

This patent is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **two thousand, one hundred and seventy-nine (2179) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanowski/

Paul Shanowski

Senior Attorney

Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,673,229 B1

DATED : March 2, 2010

DRAFT

INVENTOR(S) : Pearson et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 2352 days

Delete the phrase "by 2352 days" and insert – by 2179 days--